



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/153525

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 17, 2013, at Milwaukee, Wisconsin.

The issues for determination are whether Milwaukee Enrollment Services (the agency) correctly implemented an IPV sanction and whether it correctly determined the remaining FoodShare allotment for the Petitioner's children.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Yia Xiong, Income Maintenance Worker II
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On November 4, 2013, the Division of Hearings and Appeals conducted a hearing to determine whether the Petitioner committed an intentional program violation by trafficking her FoodShare benefits. The Petitioner did not appear at that hearing. (Exhibit 2, pg. 7)
3. On November 7, 2013, the Division of Hearings and Appeals issued a decision sustaining a determination by the Department of Health Services that the Petitioner committed an Intentional Program Violation (IPV) by trafficking her FoodShare benefits and ordered Petitioner to be disqualified from the FoodShare program for one year. (Exhibit 2, pgs. 8 & 9)
4. On November 12, 2013, the agency sent the Petitioner notices indicating that she was disqualified from the FoodShare program because she was found to have committed an IPV and that she would be disqualified for 12 months, beginning December 1, 2013. (Exhibit 2, pgs. 15, 31, and 32)
5. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 18, 2013. (Exhibit 1)
6. Petitioner began receiving Transitional FoodShare benefits in October 2013, in the maximum amount of \$793 for a household of five. She received this same amount in November 2013. (Testimony of Mr. Xiong)
7. Petitioner's household consists of five people, the Petitioner and her four children. (Testimony of Mr. Xiong and the Petitioner)
8. No one in Petitioner's household is elderly (over age 60), blind or disabled. (Testimony of Petitioner)

DISCUSSION

THE IPV SANCTION

A person who has been found to have committed a FoodShare Intentional Program Violation, for the first time, is disqualified from receipt of FoodShare benefits for one year. *FoodShare Eligibility Handbook (FSH)*, §3.14.1.1. That penalty can be imposed by a Federal or State Court or by an Administrative Disqualification Hearing. *FSH*, §3.14.1. States must report the IPV to the Federal government. *7 Code of Federal Regulations (CFR) 273.16(i)(1)*.

In the case at hand, the Division of Hearings and Appeals (the Division), after conducting an administrative disqualification hearing, sustained the Department of Health Service's determination that Petitioner, for the first time, committed a FoodShare Intentional Program Violation. In the November 7, 2013 order, the Division ordered the one year sanction to begin, "the first month following the date of receipt of this decision." Consequently, the agency correctly sent the Petitioner the November 12, 2013, notices concerning her FoodShare Disqualification and termination of her FoodShare benefits, effective December 1, 2013.

THE ALLOTMENT FOR PETITIONER'S CHILDREN

In the case at hand, the Petitioner and her children began receiving Transitional FoodShare benefits effective October 1, 2013. Because Petitioner had no income at the time, they received the maximum benefit for a household of five. When the agency removed the Petitioner from the FoodShare case, it stopped the children's Transitional FoodShare Benefits and recalculated their allotment based upon the Petitioner's current income. According to the agency, the children were not continued on Transitional Foodshare benefits due to limitations with the CARES computer system.

Having reviewed the FoodShare manual and the Administrative Code, I have found no policy that states that if a person is sanctioned under an IPV while receiving Transitional FoodShare (TFS) benefits, that

the remaining household members must lose their TFS status. On the contrary, under *FSH* §5.1.1.5, when a member of the TFS household leaves, the remaining members continue their TFS status:

“The only time a TFS benefit allotment amount changes is if a TFS group member moves out and becomes eligible to receive FS in another case. The TFS group’s benefit amount will be reduced. The allotment amount will be adjusted to the new household size. Income and expenses used in the original TFS benefits determination will remain the same, even if income and expenses belonged to the member who left the household. This recalculated benefit amount will remain at the reduced amount for the rest of the five month period.”

Emphasis added FSH §5.1.1.5

I note that according to the *FoodShare Wisconsin Handbook*, only the person determined to have committed an IPV is disqualified from receiving Foodshare benefits. *FSH* §3.14.1.1 All other members of the FS FoodShare group may continue to be eligible. Id. By removing the children from the Transitional FoodShare program, the agency would be effectively imposing a sanction upon them, which is contrary to *FSH* §3.14.1.1

In December 2013, the maximum allotment for a household of four was \$632 per month, due to the expiration of the ARRA (American Recovery and Reinvestment Act). *FSH* §8.1.2 As such, the Petitioner’s children should have received Transitional FoodShare benefits, in the amount of \$632, for December 2013 and through February 2014, when the five month Transitional FoodShare period ends.

If the Petitioner wants her children to continue receiving FoodShare benefits from March 1, 2014 forward, she will have to file a new application on their behalf.

CONCLUSIONS OF LAW

1. The agency correctly implemented an IPV sanction, disqualifying the Petitioner from receiving FoodShare benefits for 12 months.
2. The agency did not correctly determine the remaining Foodshare benefits for Petitioner’s four children.

THEREFORE, it is

ORDERED

That the agency issue Transitional FoodShare benefits to Petitioner’s four children, in the amount of \$632 per month from December 1, 2013 through February 28, 2014. The agency shall take all administrative steps necessary to complete this task within 10 days of this decision.

The appeal, in all other respects, is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of January, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 13, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability